

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES V. CAICO,

Plaintiff,

No. CIV S-02-1608 MCE GGH P

vs.

D. L. RUNNELS, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

For the following reasons, the court recommends that defendant Lun, now identified as defendant Nun, be dismissed.

On October 28, 2003, the court ordered the U.S. Marshal to serve defendant Lun. On November 18, 2003, service as to defendant Lun was returned unexecuted because plaintiff had not provided sufficient information to effect service. On November 25, 2003, the court granted plaintiff sixty days to submit additional information for service of defendant Lun. On May 14, 2004, the court granted plaintiff an additional thirty days to submit this information.

Plaintiff finally submitted the documents necessary to effect service on January 10, 2005. On January 28, 2005, the court ordered the U.S. Marshal to again attempt service of defendant Lun. On October 20, 2005, service was again returned unexecuted. The returned USM-285 form states that on July 29, 2005, the waivers were corrected to properly identify

1 defendant as defendant Nun. The USM-285 form submitted by plaintiff in January apparently
2 correctly identified this defendant as defendant Nun.

3 The documents attached to the USM-285 form returned on October 20, 2005, state
4 that California State Prison-Solano could not identify defendant Nun in their roster. The form
5 also indicates that the U.S. Marshal asked the Department of Corrections to search their records
6 for defendant. A document attached to the USM-285 form indicates that the Department of
7 Corrections could not locate defendant Nun.

8 Because defendant Nun cannot be located, he cannot be served with process in
9 this action. For that reason, the court recommends that defendant Nun be dismissed.

10 IT IS HEREBY RECOMMENDED that defendant Nun, formerly identified as
11 defendant Lun, be dismissed.

12 These findings and recommendations are submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
14 days after being served with these findings and recommendations, any party may file written
15 objections with the court and serve a copy on all parties. Such a document should be captioned
16 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
17 shall be served and filed within ten days after service of the objections. The parties are advised
18 that failure to file objections within the specified time may waive the right to appeal the District
19 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 DATED: 1/10/06

21 /s/ Gregory G. Hollows

22 _____
23 GREGORY G. HOLLOWES
24 UNITED STATES MAGISTRATE JUDGE

25 ggh:kj
26 cai1608.dis(3)